

Town of Bar Harbor, Maine  
Planning Board Meeting  
December 5, 2018

(Transcribed from Video Streamed Material)

1        Pamela, she worked in housekeeping at Walsh's Harborside  
2        Hotel. On her day off she helped me at my home.  
3        According to her, the seasonal workers are, for the  
4        Walsh hotels, are very angry people who go wild every  
5        night after their shifts at the Walsh restaurants end.  
6        We have found this to be very true as the abutter to  
7        Acadia Apartments.

8                When new workers come every season, they are  
9        charged for their room, which they were assured they  
10       were sharing with one roommate. When they arrive, they  
11       find that they are sharing a bed with another person,  
12       and there may be many more persons assigned to their  
13       rooms.

14               They also have to pay for their uniforms. They  
15       feel caged like animals, rats, and slaves and allowed no  
16       dignity, and they let their anger rage late at night. I  
17       have seen a toilet thrown out of one of the Acadia  
18       Apartments' windows and a front door hacked out by very  
19       angry hotel worker men late at night.

20               These tenants have no incentive to take care of the  
21       Acadia Apartments to protect it.

22               There are already huge fights every night and  
23       drinking and drugs, which the police have to break up,  
24       and liquor bottles and needles all over my property. It  
25       is empty all winter, which is a fire hazard. There is

1 not anywhere enough parking for 200. There's too much  
2 density already there with the 90 workers and residents  
3 there at this moment.

4 Acadia Apartments is becoming a big risk to our  
5 neighborhood's health and safety for our daughters and  
6 granddaughters with these people running around late at  
7 night.

8 This is a big negative impact on our neighborhood.  
9 Our property values are decreasing, and it will get  
10 worse if this new proposal is allowed. It's an  
11 abomination to squeeze every inch of Acadia Apartments'  
12 property to cage these workers with no respect for them  
13 and before our neighborhood for the sole purpose of the  
14 property owner's financial gain.

15 Our Great American Neighborhood will suffer  
16 greatly. Our neighborhood has exceptional families  
17 living there. Some have the best legal minds in Maine,  
18 like the man that just spoke, some are highly  
19 politically connected, some are scientists, and there's  
20 a devoted Harvard-trained horticulturist who has given  
21 the town of Bar Harbor a famous historic garden which  
22 gives us greater credibility nationwide.

23 In conclusion, I hear the planning board has earned  
24 a reputation for favoring development and developers. I  
25 hope the facts that I have presented here will compel

**TRANSCRIPT OF APRIL 29, 2020  
PLANNING BOARD MEETING  
PUD-2017-02**

**25 WEST STREET EXTENSION**



Town of Bar Harbor, Maine  
Planning Board Meeting  
April 29, 2020  
  
(Excerpt of Meeting)

Maine Court Reporting Services

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1 (Excerpt of April 29, 2020 Planning Board Meeting.)

2 \* \* \* \* \*

3 CHAIR ST. GERMAIN: Moving on to our -- Item 6(e).  
4 We have a public hearing for remand of PUD-2017-02 from  
10:51:33 5 the board of appeals. The location is 25 West Street  
6 Extension. Applicant/owner is Bar Harbor Apartments,  
7 LLC.

8 Are we -- go ahead, Steve.

9 MR. FULLER: Sorry, could I -- if I could just take  
10:52:08 10 a minute at the beginning, rather than wait until the  
11 public hearing starts, and I realize we're not there  
12 yet, but just if I could say to the listening audience,  
13 if there is anyone interested in speaking during the  
14 public hearing when that takes place, which is not --  
10:52:29 15 the public hearing is not taking place right now as I  
16 understand it -- but just if you wish to speak, I just  
17 want to read that number now and give folks a chance to  
18 prepare.

19 It's 288-1710. Again, 288-1710, and the pass code  
10:53:01 20 is 0107522, pound sign. Again, 0107522 followed by the  
21 pound sign.

22 I would just add, if anyone does call into that  
23 number, if you can please, you know, the chairman will  
24 state when the public hearing has been opened, so please  
10:53:31 25 wait to make any comments until that time. I just

3

1 wanted to put that out there at the beginning so that  
2 we're prepared when it does come to that point.

3 CHAIR ST. GERMAIN: Okay. Thanks.

4 MR. MOORE: Tom, this is Perry. Can I jump in real  
10:53:57 5 quick? I've asked for permission to record the meeting.  
6 It needs to be approved by Steve. We'd like to record  
7 the meeting.

8 MR. FULLER: Does anyone -- I'm trying to see if  
9 I -- Michele, do you want to weigh in? I'm not even  
10:54:22 10 sure where I see that on my --

11 MS. GAGNON: There's a record button on the right.

12 MR. MOORE: Yes. But he's requesting for recording  
13 permission from the meeting host. So the host needs to  
14 approve that.

10:54:51 15 MR. FULLER: I'm looking, Perry, to see where  
16 that's coming through on my -- my end here. I don't --  
17 I see where I can record it. I'm trying to see -- I  
18 don't see a request of any kind. Sorry, that's a first  
19 for --

10:55:19 20 MR. MOORE: Can you record it for us, please?

21 MR. FULLER: Yeah, I would note that it is being  
22 recorded on the Town Hall Streams, so it will be like  
23 any other planning board meeting, it is being stored  
24 there, and anybody could go back in.

10:55:42 25 Is that sufficient to know that it's being recorded

4

1 and stored on Town --

2 MR. MOORE: Yes.

3 MR. FULLER: Okay. Just for confirmation, that is  
4 taking place. So it will be available on -- it's  
10:55:58 5 available live now, and it will be available for  
6 watching in the future at that location.

7 CHAIR ST. GERMAIN: Okay. I will jump in here.  
8 Today what we're dealing with is a remand from the  
9 appeals board on an application that was previously  
10:56:26 10 approved by this planning board I believe last year.

11 It was appealed and the appeals board found  
12 certain -- made certain findings, and it's being given  
13 back to us, and the application has been modified.

14 So the applicant is here this evening. I know,  
10:57:12 15 Perry is here as a representative, and so is Attorney  
16 Andrew Hamilton.

17 The appellate, I believe, is represented here, but  
18 it is -- by and large this is a remand that the planning  
19 board will hear from the applicant.

10:57:45 20 We have, I think, a lot of ground to cover, and so  
21 I think what -- what I'd like to do is propose some form  
22 to this meeting that might include, you know, opening  
23 statements and a presentation by the applicant. Perhaps  
24 at some point in time we'll get to a public hearing, and  
10:58:18 25 then the planning board, I think, has a lot of ground to

1 cover today, and if we get to it, there may be a chance  
 2 during deliberations that we would converse with the  
 3 applicant, and then if we, again, these are conditional  
 4 things, I'm not -- depending on whether we get that far,  
 10:58:51 5 we will consider some sort of closing statements from  
 6 the applicant, and it's possible that members of the  
 7 public may be able to weigh in at that point in time.  
 8 However, the normal rules of the public hearing  
 9 will apply. You can call in through that line that's  
 10:59:16 10 been provided by Steve, but we don't want to have repeat  
 11 callers, so in other words, if you have something to  
 12 say, please make sure that you get it out in the time  
 13 that you're allotted.  
 14 I hope that sounds fair to everybody, and I guess  
 11:00:34 15 at this point in time, has this application, the number  
 16 of this application, been read into the record for the  
 17 site plan review, or the PUD?  
 18 Yes, John.  
 19 MR. FITZPATRICK: So, Tom, just to be clear, I'm  
 11:01:14 20 reading the document that came back from the appeals  
 21 board, and unless I'm mistaken, we are asked to do three  
 22 things.  
 23 We are asked to consider -- if I read the  
 24 decision -- based on the findings and conclusions above,  
 11:01:39 25 the board of appeals voted to vacate the planning board

1 decision and remand the matter to the planning board in  
 2 accordance with LUO Section 125-103D(1), Limited to  
 3 consideration of base development density, maximum  
 4 allowable units, and required affordable housing units  
 11:02:21 5 only consistent with the board's finding above.  
 6 Is that the case? Those three things are what  
 7 we're here to decide, nothing else?  
 8 CHAIR ST. GERMAIN: As I understand it, that's  
 9 correct.  
 11:02:50 10 MR. BEAROR: That's correct.  
 11 MR. FITZPATRICK: Okay, good. Thank you, Ed.  
 12 MR. HAMILTON: I'll defer until you're ready,  
 13 Mr. Chairman.  
 14 CHAIR ST. GERMAIN: Yes, I'm just -- thank you.  
 11:03:19 15 I'm just writing down what John said as a guidance for  
 16 myself. I'm not the one leading up the [inaudible], I  
 17 hope.  
 18 But why don't we -- Mr. Hamilton, why don't we have  
 19 you go right ahead, although, again, I'm not sure that  
 11:03:56 20 this particular application has been read into the  
 21 record.  
 22 Did you read it into the record, Basil?  
 23 MR. FULLER: Hold on, Basil is --  
 24 MR. ELEFTHERIOU: Would you like me to read the  
 11:04:25 25 entire decision or --?

1 CHAIR ST. GERMAIN: Well, I'm having trouble  
 2 remembering whether you actually read this in as an item  
 3 for the agenda.  
 4 Did you already do that this afternoon just a few  
 11:04:47 5 minutes ago?  
 6 MR. ELEFTHERIOU: For the agenda, yes.  
 7 CHAIR ST. GERMAIN: Okay. So you have -- you have  
 8 introduced the item on the agenda. I just wanted to  
 9 make sure. Sorry.  
 11:05:08 10 If that's been done, then I'll turn it over to  
 11 Mr. Hamilton, unless Mr. Moore is going to be doing the  
 12 presentation. But the applicant will have -- I'll give  
 13 you some time to make your presentation to us, please.  
 14 MR. HAMILTON: Sure. So I'm going to view this  
 11:05:45 15 with Mr. Moore. We are going to have a few PowerPoint  
 16 slides just to keep the flow of this crisp and keep it  
 17 short and sweet and focused on the three findings,  
 18 Findings No. 7, 8, and 9 that are reflected in the  
 19 decision component of the board of appeals' decision are  
 11:06:21 20 the limited considerations that the board of appeals  
 21 sent this back to the planning board.  
 22 On all other findings the board of appeals denied  
 23 the grounds for appeal, and so we're only thinking of 7,  
 24 8, and 9, and I think the question from Member  
 11:07:00 25 Fitzpatrick echoed by your attorney, Edmond Bearor, and

1 as reflected by the chairman are accurate.  
 2 So I would say good evening to everyone. I know  
 3 that we're already starting at 5:39, and these  
 4 discussions usually aren't brief, but I'm going to do my  
 11:07:43 5 best to keep ours brief.  
 6 Steve, with your technology assistance, I think I  
 7 can mirror my iPad which has the PowerPoint on it, and  
 8 let me see if this works.  
 9 MR. FULLER: Okay.  
 11:08:38 10 (Audio interference.)  
 11 MR. HAMILTON: So obviously this project is at 25  
 12 West Street Extension. It is Acadia Apartments. There  
 13 are 16 existing units, a Multifamily II project. I'm  
 14 going to say that again. It is a Multifamily II  
 11:09:11 15 project, and that means that under the land use  
 16 ordinance as we're before you here on April 29, 2020,  
 17 it's very important to make sure that we understand that  
 18 we're required by 125-20E to be before you as a PUD-V.  
 19 That's how we come to you both before and after.  
 11:09:47 20 So I think it's already been covered, but based  
 21 upon the findings and conclusions above, this is in the  
 22 decision section of the board of appeals' decision.  
 23 The board of appeals remanded -- remands the matter  
 24 to the planning board limited to consideration of base  
 11:10:17 25 development density, that's Finding 7, Maximum allowable

1 units, Finding 8, and requires affordable housing and  
2 only those items.

3 The board of appeals denied the appeal to all of  
4 the issues raised.

11:10:55 5 So in our opinion, Finding No. 2 is moot. We're  
6 going to hear some conversation about Finding 2, relates  
7 to nonconforming structures. There is a clear and plain  
8 set of provisions in the PUD-V provisions, 125-69S that  
9 I'll detail in a moment.

11:11:50 10 But the planning board can decide if the project  
11 both requires [inaudible].

12 MR. FULLER: Sorry, I think someone is on the  
13 public hearing line, and I think they're listening to  
14 the -- to the meeting and it's creating some feedback.

11:12:35 15 MR. HAMILTON: So maybe what we could say is if  
16 folks could mute their devices until they're speaking,  
17 that would be great. And thanks, Steve.

18 MR. FULLER: Yes.

11:12:57 19 MR. HAMILTON: So if the planning board proceeds as  
20 it already has, and I think largely most every one of  
21 your findings from the last decision, it's ditto as to  
22 your findings this time around except as to those three  
23 items that the board of appeals addressed.

11:13:40 24 So if we're under PUD-V, which we believe we have  
25 to be under 125-20E in your ordinance, then that's going

1 to moot the whole issue as to Finding No. 2 and  
2 nonconformities, and I'll detail that in just a moment.

3 So the narrow scope of the review again is base  
4 development density, maximum allowable units, and  
11:14:22 5 affordable housing units.

6 You have a limited application amendment before  
7 you. It's a revised subdivision plat for 16 units.

8 Previously it was 18 units. So the only difference  
9 between this one and the one that you previously  
11:14:51 10 approved is we're down to 16 units, and for those who  
11 either view the nearest whole number that you can get to  
12 as the test, we're rounding down of the test, that's  
13 what the board of appeals found.

14 So Building D on Perry's plan has been converted  
11:15:27 15 from 4 units to 2 units.

16 So the board of appeals' Finding No. 7 is that, as  
17 we all know, this lot has 85,324 square feet. You  
18 divide that parcel size by 10,000 square foot, which is  
19 the minimum area per family, a lot standard, and you  
11:16:11 20 come to a base development density of 8.5324.

21 The board of appeals said two similar things in  
22 finding it was 8. They said, you can't get to the whole  
23 number of 9 based on 8.5. They also said -- a few of  
24 them -- you would round down to 8.

11:16:54 25 So this revised application accepts the finding of

1 the board of appeals on base development density, and as  
2 you saw from the letter of Attorney Greif, he agreed  
3 that the base development density is 8. So we're not in  
4 any disagreement there.

11:17:25 5 The next is the maximum allowable units, the board  
6 of appeals' Finding No. 8. They found that instead of  
7 18, the maximum allowable units is 16, and as you know,  
8 125-69S contains a provision that says you may have up  
9 to two times the base development density. 8 times two  
11:18:14 10 is 16.

11 We note that we also have 16 units that were built  
12 by planning board approval back in the '80s. Those  
13 units became grandfathered by virtue of the change to  
14 the village residential district that changed the area  
11:18:56 15 per family and the minimum lot size in that district.

16 And so the lot became nonconforming but we have --  
17 in terms of units -- not the buildings, not the  
18 structures -- the units, we have 16 grandfathered units.

19 What is the area per family? It says, For every  
11:19:30 20 family unit, you have to have given area. And so we've  
21 got 16 grandfathered units.

22 The board of appeals' Finding No. 9, in the final  
23 plan, The minimum number of affordable units or lots  
24 must be 20 percent of the base development density.

11:20:07 25 That's cited in 125-69S(6)(b). 20 percent of 8 is 1.6.

1 Again, the board of appeals' logic was and is you  
2 need to get to the nearest whole number. You can't get  
3 to 2. You round down to 1 or you choose the full whole  
4 number that you can accommodate within 1.6.

11:20:52 5 For either of those reasons for consistency, a  
6 rounding down or nearest low or whole number is the  
7 finding of the board of appeals.

8 So why do we need to proceed before you this  
9 evening to come before the planning board? There are at  
11:21:26 10 least three reasons. First of all, 125-20E provides  
11 that Multifamily II is a use allowed by plan unit  
12 development approved by the planning board. The code  
13 officer, the board of appeals, neither have the  
14 authority to grant a PUD-V. That strictly resides with  
11:22:09 15 the planning board.

16 The whole concept of a PUD, why do you proceed?  
17 Because you've got dimensional standards that can't  
18 always be met for a given development. So 125-69S(1)  
19 provides for a greater freedom of design and improving  
11:22:53 20 the opportunity for flexibility and creativity in the  
21 land development process.

22 That means that wholly coherent with 125-64, which  
23 is invoked by the ordinance in the context of both PUDs  
24 and particularly to this one subdivision, you have the  
11:23:25 25 ability to modify standards. And so the PUD is the

1 vehicle that the ordinance requires that we use.

2 Then what is the board's authority? There's  
3 conflict here. The appellate, Mills, argues through her  
4 counsel that the planning board doesn't have any  
5 authority to vary requirements in the ordinance  
6 including for so-called nonconforming structures. We  
7 disagree.

8 125-69S(2)(c) does indeed vest the planning board  
9 with authority to approve changes to dimensional  
10 standards since the planning board is the permitting  
11 authority for PUD-V.

12 If the Town was to designate a review authority for  
13 a given style of development -- in this case the  
14 PUD-V -- it would be strange not to give them permitting  
15 authority.

16 So you also know that under 125-64 you're the one  
17 entity, the land use entity, that has authority to  
18 modify standards. If you look to the plain language of  
19 125-64, it's only the planning board that can modify  
20 standards.

21 So you put two concepts together -- three concepts  
22 together -- 125-20E says, if you're going to do a  
23 PUD-V-style project, which this one is styled as, and  
24 thus interior setbacks can be modified, as you did with  
25 the original approval, that's a Multifamily II. That's

1 a planned use development. 125-20(E) says go to the  
2 planning board and only to the planning board. Nobody  
3 else has got authority to do this.

4 You then take the authority to provide greater  
5 freedom of design and improve for flexible and creative  
6 land development process and use your authority under  
7 125-69S(2)(c). That means you are the permitting  
8 authority. You have the authority to invoke this.

9 And then finally, 125-64 says you're uniquely the  
10 board that can modify standards.

11 There's no way to approve this project except  
12 through the planning board, and I think it's hopeful  
13 that the board of appeals only remanded for three  
14 issues.

15 So given that the planning board has authority  
16 under 125-69S to modify the area per family standard  
17 through PUD-V and apply the PUD-V standards to approve a  
18 16-unit project at two times the base development  
19 density of 8, rounded down or containing the whole  
20 number of 8 per the board of appeals' finding, so legal  
21 nonconformities, whether it be a nonconforming lot or  
22 any theory that we know we're going to be taking up  
23 before the board of appeals, it's likely that no matter  
24 which way you decide this one again, it's going to the  
25 board of appeals. We can resolve the nonconforming

1 structure question, we think it's erroneous, but we're  
2 not asking the planning board to find that the board of  
3 appeals committed error. We're just saying, once we  
4 vest our rights after you provide for amended PUD-V  
5 approval as you did last time, that will then remove the

6 nonconformities. It's all conforming under 125-69S.  
7 So we don't have to decide if there's nonconforming  
8 structures on this property, there aren't, but we don't  
9 have to decide that because this provision, 125-69S,  
10 says it doesn't matter how you came to us, if you're  
11 under a PUD-V, we give you authority to proceed as a  
12 PUD-V.

13 So we would ask for two planning board findings to  
14 be very clear. First is that the dimensional standard  
15 noted by the appeals board as creating a nonconforming  
16 condition is the minimum area for family standard, and  
17 you find that in Article III, Section 125-20B of the  
18 land use ordinance.

19 Two, the planning board has authority under 125-69S  
20 to modify that Article III standard. There is no reason  
21 that these PUD-V projects come before you unless they  
22 can't meet dimensional standards under Article III.  
23 They're coming to you because they want to proceed as a  
24 better-designed project, one that can advance the Town's  
25 objectives as articulated in 125-69.

1 The third finding, once the planning board affirms  
2 the board of appeals' finding of development density of  
3 8, then the project complies with the land use ordinance  
4 and there is no nonconformity, and therefore Finding  
5 No. 2 of the findings in the appeals' decision is moot.

6 We don't have to talk about it, it's mooted.  
7 And then the next finding is 4, All legal  
8 nonconformities are eliminated once the planning board  
9 grants amended PUD-V approval, and 2, BHAPTS vests that  
10 approval by commencing construction of the project after  
11 amended PUD-V approval of the project by the planning  
12 board.

13 There can be all kinds of exotic theories, but what  
14 I've provided as thoughts really is all that you need to  
15 review. Everything else is coloring outside the lines  
16 and getting way too creative, particularly for this hour  
17 of a very fine day outside.

18 So I'm happy to be brief but to answer any more  
19 data points that you need by answering any questions  
20 that you have.

21 MR. FULLER: Do you mind, Andy, if I -- are we all  
22 set with the screen sharing for now?

23 MR. HAMILTON: Yes.

24 MR. FULLER: Okay. I just want to go back so  
25 everyone viewing at home can see who's -- see who's

1 speaking.

2 MS. GAGNON: Before we start, can I say something,  
3 Tom?

4 CHAIR ST. GERMAIN: Yes, please. Go ahead,  
5 Michele.

6 MS. GAGNON: Andy, this was not part of the mailed  
7 package. Now that you've presented that, that becomes  
8 part of the record, so I would like to get a copy  
9 immediately after this meeting. I'd like you to email

10 this to myself and to the planning board so we can make  
11 sure that's part of the record.

12 MR. HAMILTON: You should know, Michele, that I had  
13 committed to share it with the planning staff, and so  
14 Steve Fuller has it.

15 MR. FULLER: I did -- I received it. That's  
16 correct. Andy sent it to me this afternoon just  
17 before -- shortly before the meeting. I can forward  
18 that on, too.

19 MR. HAMILTON: I did not share it as a submittal.  
20 I shared it as an illustrative presentation, and as  
21 Attorney Bearor knows, it's okay to do a presentation,  
22 and that's all I was doing.

23 It's all in the letters and materials. I could  
24 have -- I could have, you know, buried the planning  
25 board in paper. We decided not to do that just to keep

1 it brief.

2 But thank you, Michele.

3 MR. MOORE: Tom, can I jump in real quick?

4 CHAIR ST. GERMAIN: Sure.

5 MR. MOORE: The things that we would like to ask  
6 for as we conduct the meeting tonight is that there may  
7 be times when our team needs to compare notes or there  
8 may be times when we ask you for a side bar. I just  
9 wanted to alert you to that and ask for the privilege to  
10 do that.

11 As you know when we're live and sitting next to  
12 each other at the planning board meeting, we pass notes,  
13 we lean over. That's part of the dynamic that we need  
14 to have to make sure we're all on the same page.

15 So at the board's pleasure, I would like to have  
16 that opportunity.

17 CHAIR ST. GERMAIN: Okay. I think that's fair.  
18 How is that going to -- are you suggesting that we --  
19 you guys just mute and you have some way of  
20 communicating amongst yourselves?

21 MR. MOORE: Yes.

22 CHAIR ST. GERMAIN: Okay. Then we'll keep the  
23 meeting going while we wait for that to occur.

24 I guess at this point in time what I'd like to do  
25 is ask board members if they have questions about that

1 presentation to address that with Attorney Hamilton  
2 regarding the presentation that he gave and see if there  
3 is a thought that we can develop for the course of  
4 action that we might take this afternoon.

5 Go ahead, John. Do you have a question?

6 MR. FITZPATRICK: Part a question, part a  
7 statement. Again, I go back to my initial question that  
8 Ed answered earlier.

9 I think we're here to provide simply three numbers:

10 Base development density, maximum number of units, and  
11 the number of affordable units.

12 I appreciate what Andy's asking for, findings about  
13 the planning board's ability to vacate area per family  
14 requirements and dimensional standards, but that's --  
15 that's not really what we're here to do.

16 If we approve the PUD, we were asked to provide  
17 three numbers. I think that's an argument between  
18 Andy's team and Ed's team and Art's team and everything  
19 else, whether it creates -- Item 2 is a moot point.  
20 That's not what we were asked to do.

21 So I would suggest that the planning board focuses  
22 on providing those three numbers. I can certainly lay  
23 down the three numbers that I think you guys have to  
24 comply with, and we can use that as a starting point,  
25 and those numbers would be 8, 16, and 6.

1 CHAIR ST. GERMAIN: 8, 16, and 6, okay. 6 is  
2 20 percent -- could you tell me, 6, because in order to  
3 get from 8 to 16, there's a set of directions provided  
4 by 125-69S.

5 MR. FITZPATRICK: Yeah, and so I'm also assuming  
6 that there's no other provisions of the PUD that are  
7 taken advantage of, whether it's putting in a bus stop,  
8 whether it's putting in a sidewalk down to Eden Street.

9 But if the way to get to the maximum number is  
10 through providing affordable units, then I think we're  
11 at 8, 16 and 6, and how I got 6 is 20 percent of 8 is  
12 1.6. When it says minimum of, you round up, you don't  
13 round down. And the rounding down provision in an  
14 earlier part of the ordinance deals with proportionality  
15 of the phased construction. I don't think it applies  
16 going further.

17 So if a minimum of 20 percent is 1.6, then you have  
18 to provide 2. We're up to 8 units, and if we want to  
19 bring 8 more on at a 1:1 ratio, then 2 plus 4 is 6.

20 MR. HAMILTON: So can I respond to that at some  
21 point, Mr. Chairman?

22 CHAIR ST. GERMAIN: Yeah, I think what I'd like to  
23 do is poll other members and maybe we could have that as  
24 a question that you could respond to, because I have a  
25 similar question, but it's not exactly the same. So I



1 think that what I'd like to do is maybe go to other  
2 members if they have a question -- questions for you and  
3 do it that way.

4 MR. HAMILTON: Very good.

11:47:14 5 CHAIR ST. GERMAIN: John, is that a summary of  
6 everything that you believe we need to determine this  
7 afternoon?

8 MR. FITZPATRICK: Yeah, yeah, I think it's pretty  
9 short and sweet.

11:47:27 10 CHAIR ST. GERMAIN: Okay. Joe, go right ahead,  
11 please.

12 MR. COUGH: I'm trying to understand the 8/16 John  
13 suggested as a starting point. I'm a little perplexed  
14 by the 1.6 rounding up to 2 given the planning board  
12:25:57 15 decided to round down from the 1.5, which we are all  
16 taught in math rounds up. So I'm not sure that  
17 that's -- and I don't know, I haven't looked at the  
18 ordinance to compute that -- but my sense is that  
19 because we're not a whole number, it would be back down  
12:26:32 20 to 1, at least starting from there. That's it for now.

21 CHAIR ST. GERMAIN: Okay. Basil, do you have any  
22 thoughts to share on these numbers?

23 MR. ELEFTHERIOU: Yeah, I agree with John on, you  
24 know, the base and 16.

12:27:03 25 John, I guess I just ask on the 6, if you have 8

1 base units, you're saying the 9th is affordable, the  
2 10th is market, 11th is affordable, and so on? Is that  
3 how -- is that how you're calculating?

4 MR. FITZPATRICK: Correct.

12:28:26 5 MR. ELEFTHERIOU: So by your argument, are you  
6 saying 9 and 10 -- you're saying 9 and 10, affordable,  
7 11 is market, 12/13 affordable, then market, then  
8 affordable?

9 MR. FITZPATRICK: Yeah, so basically 2 out of the  
12:28:57 10 first 8 are affordable, and then a 1:1 ratio, 4 out of  
11 the next 8 would be affordable, again, unless the  
12 applicant's taking advantage of another way to get a  
13 market unit apartment in there through a bus stop or a  
14 sidewalk or some other public infrastructure  
12:29:33 15 improvements.

16 MR. ELEFTHERIOU: You know, at this moment I agree.  
17 I understand we had likely discussions the last time on  
18 the base development number 8, and I think, you know,  
19 obviously the nonconformity of the lot, does come to 8,  
12:31:03 20 and I think in reviewing some of the stuff, you know, I  
21 think Ed had said it in some correspondence.

22 You can't have it both ways when you forfeit the  
23 nonconformity protection. If you forfeit that  
24 nonconformity protection, it's referred to a PUD-V. You  
12:31:53 25 just can't have it both ways and I think that's --

1 that's where some of this argument is going to come into  
2 play.

3 So at the moment I would agree with John unless --  
4 unless someone can provide something else.

12:32:16 5 MR. HAMILTON: Again, we'll defer, but I'd like the  
6 opportunity.

7 CHAIR ST. GERMAIN: You'll be given the  
8 opportunity. I think that perhaps we could get  
9 questions from each of us, and you could deal with them  
10 in the aggregate in the event that some of them overlap.  
11 I believe that my questions may overlap with some of the  
12 comments from other members.

13 Erica, do you have questions?

14 MS. BROOKS: I actually -- I don't right at this  
12:33:27 15 moment. I'm still doing some more math.

16 CHAIR ST. GERMAIN: Okay. If you don't mind, then  
17 I'll jump in, and I'll -- in addition to the questions  
18 that have been put out there by -- or suggestions by  
19 other members, I would like to add to that list for  
12:34:05 20 Mr. Hamilton to tell us how we're going to get from 8 to  
21 16.

22 If the base -- if we accept that the base  
23 development density is 8, is there -- are you saying  
24 that the -- I guess I'd like you to separate between  
12:34:35 25 nonconforming, grandfathered nonconforming number of

1 units at 16, or if you're going to use 125-69S(6), some  
2 of the other ways to get 2 additional units and thereby  
3 reduce the number of affordable units. That's one  
4 question.

12:35:10 5 I guess that really both of my questions are rolled  
6 into that one, and this is a question I think for the  
7 planning board to kind of consider as well.

8 This property right now has a grandfathered number  
9 of dwelling units of 16. It was legal when it was  
12:35:41 10 built. The land use ordinance changed. The base  
11 development density is much less than that.

12 Are we going to resolve that tonight or is that --  
13 are we just going to go with the base development  
14 density if we agreed that it's 8 and figure out how we  
12:36:15 15 get to the 16 that exists now and permit it as a PUD-V  
16 as suggested by the applicant tonight?

17 It's actually done -- I think we can deliberate  
18 that as a board later, but I think unless Erica would  
19 like to add to the list, then maybe we can turn it back  
12:36:55 20 over to Attorney Hamilton and he can deal with some of  
21 these questions.

22 Erica, do you have anything to add right now?

23 MS. BROOKS: No. I'd like to hear what  
24 Attorney Hamilton has to say.

12:37:20 25 CHAIR ST. GERMAIN: Okay.

1 MR. HAMILTON: So thank you all members of the  
2 board. I'm going to lean in on Mr. Moore who's got vast  
3 experience with the Bar Harbor land use ordinance and  
4 ask for his thoughts, and I'm going to supplement what  
5 Perry has to say.

6 MR. MOORE: Thanks, Andy. Okay. We agree with  
7 16 -- or 8 as the base and 16 is the maximum. There's  
8 no quibble with that.

9 As to the affordable, I think there's two -- two  
10 paths you can take there. I agree with the chair that  
11 we're grandfathered for 16. My reading of the ordinance  
12 is that you're entitled to 16 units, 16 market units,  
13 but because there's a requirement that 20 percent of the  
14 units be affordable, our calculation is 1.6 of the total  
15 must be affordable, so that's 2. We're willing to do 2.

16 That's the base of the application.

17 The second way that you can get to the affordable  
18 units is to endorse the idea that we were required to  
19 walk away from the nonconformity because we applied from  
20 the PUD. That is not stated anywhere in the ordinance.

21 Any attempt to say that we have to do that is  
22 legislating outside the ordinance; however, if we want  
23 to go there, the way 125-69S is set up is that  
24 there's -- -69S(6)(2) is an a la carte menu by which we  
25 can ask for additional units over the base development

1 density of 8.

2 There is no requirement that we have to provide  
3 affordable housing except for the total must be -- it  
4 must be 20 percent of the total at the end of the day.

5 So if we were to agree to throw away a  
6 grandfathered nonconformity and go with the base of 8,  
7 we've got 8. We've got underground utilities. We get 1  
8 for that. That's 9. We also did pedestrian amenities  
9 in the form of a sidewalk and bike rack on Woodbury  
10 Road, which I recall from the previous application was  
11 considered to be good enough for that part, which is  
12 129-69S(e). So that's 10.

13 Then we do 1 affordable and 1 market rate, another  
14 affordable and 1 market rate, another affordable and 1  
15 market rate for 6 more units. That's 16. I think --  
16 and in that interpretation it's the only way that you  
17 can get there. I don't see that we're required to give  
18 20 percent of the base as -- upfront before we start  
19 adding those from 129-69S(3).

20 Andy?

21 MR. HAMILTON: Perry, that's helpful because it  
22 gives the two branches that Chairman St. Germain was  
23 looking for. So I'm going to supplement in a couple of  
24 different ways but some of it may be redundant.

25 So I fundamentally do agree that we are not

1 required by 125-69 to treat 25 West Street Extension as  
2 though it's a vacant lot. It's not. It has 16 existing  
3 units on it.

4 So your ordinance provisions in the 125-50 series,  
5 including 125-56, provide the requirement that we must  
6 treat nonconformity as transferrable when BHAPTS -- for  
7 some reason Art's face is moving from side-to-side,  
8 thanks Art.

9 So when BHAPTS acquired this property, they  
10 acquired a property that had been approved by the  
11 planning board, they acquired a property that had  
12 already been built out in 16 units, they had acquired a  
13 property that was configured into four buildings, so 4  
14 units per building, and for more than 30 years that  
15 existed at the site.

16 They then wanted to do a PUD-V project because the  
17 layout, the configuration of those buildings, was not  
18 optimal, and so they applied under PUD-V.

19 I think it's a difficult conclusion both legally  
20 and as a matter of land use policy to say somebody who  
21 has an existing house on their property and wants to  
22 [inaudible] -- for somebody that wants to have the  
23 opportunity to redevelop their property, they have every  
24 opportunity to use those nonconformities. You're going  
25 to hear nonconformity argued two polar opposite ways.

1 We argue that grandfathering gives you rights.  
2 You'll hear Mill's argument that it's a straightjacket.  
3 It limits what you can do in terms of footprint for  
4 those structures.

5 So we don't agree that you give up nonconformities.  
6 We think you start with a base of 8. Either way, either  
7 under PUD or nonconformities, you start with a base of  
8 8. We do not agree that you start with a base of zero,  
9 and I think the difficulty is, if we think about  
10 starting at zero, you are wiping the slate clean.  
11 You're taking away rights, you're taking away property  
12 rights specifically, and I don't think this applicant  
13 will ever tolerate the idea that it loses property  
14 rights.

15 Now let's go to the second branch that Mr. Moore  
16 spoke of. If we start at 8 market units, because that's  
17 the development density, we have a base of 8, then there  
18 is 1 for underground utilities, that's a credit, 1 for  
19 pedestrian amenities. We're now from 8 market units to  
20 10 market units. Now we start using the cadence that is  
21 provided in one provision of the ordinance where you  
22 start counting one-by-one.

23 So if we start at 10, the next that would be an  
24 affordable is number 11. The next market would be 12.  
25 The next affordable would be 13. The next market would

1 be 14. The next affordable would be 15. The next  
2 market would be 16.

3 That cadence takes you to 3 at most. I cannot find  
4 a way that is both somewhat respectful of the property  
12 50:29 5 rights of all Bar Harbor residents as well as the  
6 understanding that there's nothing in 125-69 that  
7 eradicates rights under Article V, the nonconformities'  
8 provision, and so you use the two together, and I think  
9 they merge somewhere between 1 and 3. I can't get to 4

12 51:08 10 or 5 or 6.  
11 Now, to answer specifically Member Fitzpatrick's  
12 good question, he's starting with the premise that if  
13 you want 8 to begin with, you've got to give up 2  
14 affordable units. I can't agree with that. That would  
12 51:40 15 be to not only deprive property rights but it would be  
16 to stand 125-69 on its head and we don't agree.

17 To answer Basil's good question, Member  
18 Eleftheriou, I do agree, Basil, that I think you have to  
19 look at the nonconformity, but I choose to understand  
12 52:27 20 that the lexicon of lawful nonconformity means that  
21 something exists. If this was a vacant lot, we start at  
22 zero. We're not starting at zero. We've got 16  
23 existing units on that property.

24 And so I do agree with the view that you can't  
12 52:59 25 leverage to the Heavens without using affordable units,

1 but you hear this applicant saying, we agree, it's 8,  
2 base development density, it's 16 for total number of  
3 allowable units, and therefore, start at 8, give the  
4 credit for 2 that's authorized by 125-69S clearly, and  
12 53:40 5 now you're at 10, and you go in a rule of cadence to go  
6 from 11 through 16, and that requires 3 units.

7 I can't get above 3, and I think it's responsive  
8 to -- to Member Fitzpatrick's comment, but I also think  
9 it is responsive to those who understand there's nothing  
12 54:16 10 in 125-69 that negates Article V.

11 I have seen provisions that are varied by 125-69,  
12 but those are the articles, three-dimensional standards.

13 And so as I said in the PowerPoint, we're looking  
14 at Article III dimensional standards that are changed by  
12 55:20 15 125-69. I find nothing in the plain language of the  
16 land use ordinance that says we negate the Article V  
17 lawful nonconforming rights.

18 I hope that robustly is helpful but I want to  
19 emphasize something. I think we can get there tonight  
12 55:58 20 because the only way we don't resolve is we have a  
21 disagreement over affordable units. That's going to  
22 send us to the board of appeals, and we can resolve with  
23 them at a further time if we need to.

24 I think the planning board can finish up tonight  
12 56:35 25 even after hearing argument that, gee, maybe there needs

1 to be 8 affordable units. Who knows?

2 So I think we're somewhere between 1 and 3, and I  
3 think this applicant could live at between 1 and 3. We  
4 can't live at 6 or 8. It doesn't make sense to us. So  
12 57:17 5 I'll leave it there.

6 CHAIR ST. GERMAIN: John, go ahead. Thank you,  
7 Mr. Hamilton.

8 MR. FITZPATRICK: Yeah, thank you, Andy.  
9 Appreciate that.

12 57:28 10 So I'm embarrassed to say my math has been  
11 corrected. The minimum -- I still feel that 8 is base  
12 development density, 16 is max. The 20 percent rounding  
13 up is where we need to end up at 2 or greater.

14 And if we do look at starting with the first data  
12 58:07 15 as market, the underground utilities, if we're going to  
16 take advantage of that provision, it gives you an  
17 additional market unit for 9.

18 If we do put in a permanent amenity from the site  
19 to the intersection of Eden Street or whatever it is  
12 58:43 20 that the board agrees to, there's another market for 10.  
21 And then if you follow your cadence, then I see that we  
22 do get to 3, 3 affordable, 3 market, we're at 3  
23 affordable, 3, 13 market overall. That exceeds the  
24 20 percent minimum. So my sixth number is now 8, 16,  
12 59:26 25 and 3 is where mine ends up.

1 MR. ELEFThERIOU: I was just going to reinforce a  
2 little bit of what John had said, so I'm looking at a  
3 letter from Ed Bearor from August 14th, 2018, and this  
4 was a discussion where we were talking about the base  
01 00:15 5 units and also the affordable units. I was trying to  
6 think if this discussion was going on, how we ever  
7 arrived at the affordable unit 1.

8 But Ed's letter -- and I'll read a portion of it, I  
9 don't know if anyone has it in front of them -- but it  
01 00:43 10 cites -- I'll just start in the middle paragraph.

11 It says, In this instance the affordable unit  
12 dedication formula in Section -69(R)(3)(f) requires that  
13 we round down. So only 1 affordable unit is required  
14 under base development density.

01 01:26 15 And then, of course, he just goes on to reiterate  
16 some of the things that we can use like the utilities  
17 and the pedestrians to increase that.

18 So I guess that kind of reinforces what  
19 Mr. Hamilton said about, you know, to being just 1  
01 01:56 20 instead of 2, which John had initially said, and I would  
21 agree with John and Andy Hamilton that, you know,  
22 provided for the utilities and the pedestrians and  
23 leaves you with the base, it leaves you with 10. Doing  
24 the math gives you 3 affordable. So I would agree with  
01 02:27 25 that number.



1 CHAIR ST. GERMAIN: Thank you, Basil.  
 2 Just as food for thought in looking at 125-69S(6),  
 3 if you go through all the menu as it was described by  
 4 Perry for the way to get to additional market rates  
 01:03:15 5 versus affordable units, if you go past that, and it's  
 6 125-69S(6)(b), it says -- and this is, I think -- it  
 7 duplicates the support of the math as performed by both  
 8 Member Fitzpatrick and what Basil suggest that in that  
 9 provision it says, Affordable units and lots. In the  
 01:04:01 10 final plan, the minimum number of affordable units or  
 11 lots must be -- must be -- 20 percent of the base  
 12 development density.  
 13 So I'm not sure if that leads us astray or not, but  
 14 20 percent, that is a minimum number of the base  
 01:04:24 15 development density, but it strikes me that it must be  
 16 20 percent of the base development density, and I don't  
 17 know if that causes any other consideration among the  
 18 members as we read it, but I am interested in what you  
 19 have to say about that.  
 01:04:54 20 Does anybody see any --  
 21 MR. FITZPATRICK: [Inaudible]  
 22 MR. ELEFThERIOU: Pardon me, John?  
 23 MR. FITZPATRICK: Are you asking board members?  
 24 MR. ELEFThERIOU: Yes, I am.  
 01:05:20 25 MR. FITZPATRICK: Yeah, I'll throw my 2 cents in.

1 It says minimum of 20 percent of base development  
 2 density as long as -- in my reading -- there's two or  
 3 more that we've met it.  
 4 PARTICIPANT: I would agree.  
 01:05:51 5 CHAIR ST. GERMAIN: And you're saying the base  
 6 development density is 8, and as long as there's 2 or  
 7 more, we've met that even with what Basil just said  
 8 about 125-69 or in the provision that says that  
 9 fractional sums should be rounded down?  
 01:06:25 10 MR. FITZPATRICK: Well, it does say fractional  
 11 sums, but I read that as directly related to  
 12 proportionality for phased construction, not carrying  
 13 through the entire ordinance.  
 14 CHAIR ST. GERMAIN: Okay. Joe, do you have  
 01:06:48 15 something that you wanted to say?  
 16 MR. COUGH: No, I was going to say, I mean, no  
 17 matter how you look at it, it doesn't say it has to  
 18 carry through the entire development on every aspect of  
 19 it. It's simply says minimum base development.  
 01:07:19 20 And if we identify the minimum base development as  
 21 8, 20 percent, 1.6, so you could argue whether it's, you  
 22 know, 2 or 1 or whatever. If they're -- if they're  
 23 choosing 3, then we've exceeded that level.  
 24 So either way we're -- we're satisfying the  
 01:07:54 25 ordinance, and maybe that's how we deal with it. We

1 identify, you know, under this and under that they're in  
 2 compliance if that's the way we choose to go.  
 3 CHAIR ST. GERMAIN: Okay. Thank you. All right.  
 4 Tonight is a -- there is going to be a public hearing  
 01:08:27 5 aspect of this.  
 6 At this point in time, Steve, I know Attorney Greif  
 7 is here as an interested party, and I don't know if he  
 8 would like to go first or if you have members of the  
 9 public that are waiting in line right now. Steve, I'll  
 01:08:51 10 leave that up to you.  
 11 MR. FULLER: Yeah, I'm just checking. Sorry. I've  
 12 got -- yeah, I know, as you said, Tom, I know that  
 13 Attorney Greif is here.  
 14 Maybe if I could just read the number one more  
 01:09:13 15 time, and then we could -- since we know that  
 16 Attorney Greif is here, go to him first, and then that  
 17 would give anyone who's dialing in a chance to -- does  
 18 that make sense? I'll just read the number, then we  
 19 could go to Art because we know that he's here.  
 01:09:41 20 PARTICIPANT: [Inaudible]  
 21 MR. FULLER: Okay. I'll read the number real  
 22 quick, and then we can see if we can get Art connected  
 23 if that makes sense.  
 24 CHAIR ST. GERMAIN: Great.  
 01:51:29 25 MR. FULLER: If anyone's watching and wishes to

1 participate in the hearing, I know we've got at least --  
 2 it sounds like at least one person on the line -- but  
 3 for anyone watching who wishes to participate, again,  
 4 the number is 288-1710. Again, 288-1710 with a pass  
 01:52:10 5 code when prompted of 0107522 followed by the pound  
 6 sign. Again, 0107522 followed by the pound sign.  
 7 I think we may have Attorney Greif both on the  
 8 phone line and in the Zoom meeting. Can you hear us,  
 9 Art?  
 01:52:48 10 BY MR. GREIF: Yes, and I will appear via the Zoom  
 11 meeting.  
 12 MR. FULLER: Okay. Can everyone else hear him? I  
 13 can hear him. Can everyone else hear him? Okay, yep,  
 14 go ahead.  
 01:53:13 15 MR. GREIF: Can you hear me?  
 16 MR. FULLER: Yes.  
 17 MR. GREIF: First and foremost, the reason the  
 18 board of appeals remanded on the issue of number of  
 19 affordable units is that the grandfathered structure,  
 01:53:34 20 the nonconforming structure, didn't matter if you put in  
 21 6 affordable units.  
 22 And so if you've got the affordable units  
 23 correct -- and we suggest it's either 5 or 6 -- then the  
 24 fact that it's a nonconforming structure doesn't matter.  
 01:53:58 25 Now, I keep puzzling at the fact that

1 Attorney Hamilton says that these are grandfathered  
2 units. A unit is nothing more than a structure itself  
3 or part of a structure, and when this planning board  
4 reached its first decision, it found that the 16 units  
01:54:38 5 were grandfathered, so it only had to deal with  
6 affordability for the remaining 2 units.

7 But once we realized that these are nonconforming  
8 structures, which now with the conversion of Building D  
9 to contain only 2 units will finally have been converted  
01:55:16 10 to nonconformity, you can only add more than the 8 units  
11 that the district requires as the absolute maximum by  
12 complying strictly with PUD-V process.

13 And there's never been a finding or any  
14 presentation for this hearing about the possibility of  
01:55:52 15 underground power lines or pedestrian amenities. The  
16 entire application -- and the only matter that is  
17 properly before this board -- is they want to stay with  
18 the same 2 affordable units that were required when you  
19 last heard this matter, and they don't want to deal with  
01:56:19 20 the hard, cold fact that once they have the 8 units that  
21 are allowed, 20 percent of which -- and I think  
22 Mr. Fitzpatrick is right -- 2 have to be affordable,  
23 that for every additional -- to get to 16 units, you  
24 have to apply -- comply with the affordable housing  
01:56:55 25 requirement, and that means a one-for-one match so that

1 to get from 8 units to 16 units, which are really  
2 nothing more than parts of a structure, you have to add  
3 4 affordable units.

4 And so you have a total requirement of 6 affordable  
01:57:21 5 units. If you have 6 affordable units, the fact that  
6 these are nonconforming structures doesn't matter.

7 But the planning board got to its initial decision  
8 that we took an appeal from and prevailed by saying,  
9 we're going to take this grandfathered status and apply  
01:58:00 10 it to three completely new buildings.

11 I heard Mr. Hamilton say you can transfer a  
12 nonconforming status. Yes, that refers to a transfer  
13 from one owner to the other; but you cannot transfer a  
14 nonconforming status to an entirely new building, in  
01:58:32 15 fact, even move a nonconforming structure within the  
16 confines of the lot, you must go to the board of  
17 appeals.

18 Finally, the notion that there could be some waiver  
19 through Section 125-64 flies in the face of that  
01:59:55 20 language, because 125-64 talks about health or safety  
21 reasons, not the convenience of the applicant, and I  
22 looked again at the citation that Mr. Hamilton made to,  
23 we can waive it -- and bear with me because I don't have  
24 my LUO in front of me. If you give me 2 seconds I will  
01:59:49 25 pull it.

1 He said we can waive it under the provisions of  
2 125-69S(2)(c).

3 Let me read that section to you. The planning  
4 board is a permitting authority for a PUD-V; however,  
02:00:29 5 any other permits and approvals required must be sought  
6 and received by the applicant.

7 There's nothing in that section that allows the  
8 planning board to waive the dimensional requirements for  
9 village residential district, which makes each one of  
02:00:56 10 these current 4 structures nonconforming until they're  
11 reduced to 2 dwelling units each.

12 The only provision for waiver deals with setbacks.  
13 That's later in the 125-69S. And so you have to have 5  
14 or 6 affordable units, and there's no basis -- there's  
02:01:29 15 nothing in this application -- that seeks to take  
16 advantage of underground utilities or pedestrian  
17 amenities or hooking up pedestrian amenities, and so  
18 they cannot surprise us with that application with that  
19 change at the hearing.

20 The application was long ago final. They never  
21 justified why they were going to get to anything more  
22 than the original 2 affordable units that were part of  
23 the application. The Superior Court said that that was  
24 an incorrect interpretation of the LUO. The planning  
02:02:24 25 board said that's an incorrect interpretation of the

1 LUO, and the affordable units have to be 5 or 6, not the  
2 1 to 3 that Attorney Hamilton suggests.

3 Thank you. I'm happy to take questions.

4 CHAIR ST. GERMAIN: Thank you. Steve, did you say  
02:02:54 5 you have somebody on the phone?

6 MR. FULLER: I believe so. I'll check right now.  
7 Is there anyone on the conference call line that wishes  
8 to make a comment during the public hearing portion of  
9 this application? Is there anyone there? Could you  
02:03:12 10 please identify yourself?

11 MS. KARLSON: Donna Karlson.

12 [Inaudible]

13 CHAIR ST. GERMAIN: While you're speaking, Donna,  
14 if you could mute the Zoom.

03:12:01 15 MS. KARLSON: Thank you for being patient.

16 [Inaudible]

17 The first thing I want to say, I've been listening  
18 to the two points on the property rights that  
19 Mr. Hamilton brought up.

03:12:36 20 I live in a lot where a house was constructed  
21 approximately the same time frame that the old Acadia  
22 Apartments was. So this is -- I have a single-family  
23 residence here. The lot is approximately 16,000 square  
24 feet, which I'm sure if I went to apply for a building  
03:13:38 25 permit and asked, please let me build a second dwelling

1 unit on this lot, I would be denied automatically  
2 because the standard now is 10,000 square feet, and I  
3 don't have 20,000 square feet, I have only 16,000 square  
4 feet.

03:14:04 5 So I would like the planning board to think  
6 carefully about Mr. Hamilton's argument about  
7 grandfathering, which, if the planning board agrees with  
8 Mr. Hamilton about this sort of transferring of  
9 grandfathered rights in a very broad fashion, it means  
03:14:43 10 either my lot, where really, I am allowed only 1  
11 dwelling unit for 16,000 square feet because I don't --  
12 I only have 10,000 feet available, I don't have 20,000  
13 for the second dwelling unit.

14 But if this planning board agrees with Mr. Hamilton  
03:15:20 15 on this, that means I and many other people in  
16 Bar Harbor could then, through his argument about  
17 grandfathering, all of a sudden start building lots of  
18 additional dwelling units on their very small property,  
19 which I can tell you, my neighborhood, I know my  
03:15:57 20 neighbors, it would be highly undesirable for reasons  
21 the public speaker, from another matter, a site plan  
22 review, said.

23 The density is not what we really should be looking  
24 at now in these times of pandemic and future pandemics.  
03:16:37 25 We should be very careful about crowding. And I think

1 this is a problem.

2 If the planning board agrees with Mr. Hamilton,  
3 that means every time someone like me with a lot that's  
4 too tiny for 2 dwelling units, they have to say, well,  
03:17:09 5 the planning board, they got away with it up at Acadia  
6 Apartments. I should enjoy the same legal right.

7 I am very concerned about this sort of very broad,  
8 broad, unusual and one that I have to remind the  
9 planning board. I've read the Superior Court decision  
03:17:41 10 on this.

11 The Superior Court justice was clear that they do  
12 not agree with this theory of grandfathering of  
13 Mr. Hamilton's, and I think the planning board and  
14 everyone should really pay close attention to that.

03:18:06 15 I'm not a lawyer. I can't argue the legal points.  
16 But all of a sudden I realize, if the planning board  
17 approves this, then I shouldn't enjoy what we have,  
18 Ocean Properties gets, and every other citizen who owns  
19 property in Bar Harbor should enjoy this wonderfully  
03:18:42 20 loose huge expansion of grandfathering rights.

21 It would be chaos, I believe, in Bar Harbor, but I  
22 would like you to think very carefully about that.

23 Again, I thank the planning board and the planning  
24 department for your time and work under very difficult  
03:19:15 25 conditions. Thank you.

1 CHAIR ST. GERMAIN: Thank you. Anybody else?

2 MR. FULLER: I'll check. Is there anybody -- we've  
3 heard from Donna. Is anybody else on the public comment  
4 line to speak during the public hearing?

03:19:49 5 Again, if you could mute -- okay, if you could just  
6 mute the meeting in the background while you're speaking  
7 so there's no --

8 MR. COLLIER: Yes, I have.

9 MR. FULLER: Okay. Can you identify yourself,  
03:20:08 10 please?

11 MR. COLLIER: Sure. My name is Sargent Collier,  
12 and my family's lived on the property next door at  
13 15 Highbrook Road. It's a family property. We've lived  
14 there for over 100 years, and as you know -- I have two  
03:20:54 15 areas in which I want to express my concern.

16 No. 1 is the visual effect. Our garden is very  
17 important. As you know, they're very historic. The  
18 house was built in 1810. It's one of the oldest on the  
19 island and it survived the fire of 1947. It's the only  
03:21:35 20 house on -- one of two houses on our side of the street,  
21 of Eden Street.

22 The gardens we open up to the public very often,  
23 and we enjoy doing that and sharing with the community.

24 One of the biggest concerns I have is you can see  
03:22:01 25 the development that they propose, you can see it from

1 the house and from the garden. The property sits down  
2 the hill from the Acadia Apartments, and I'm very  
3 concerned that this will adversely affect the property  
4 value, and I invite the planning board to come over and  
03:22:32 5 see this.

6 My second concern is grandfathering. If these  
7 grandfathered rights continue through our family, our  
8 property should be a farm that's housed here with horses  
9 and all sorts of animals, so why can't we just go ahead  
03:23:04 10 and start a farm here in the middle of town?

11 And then my last concern is the affordable housing.  
12 It's my understanding that only -- the only way to add 8  
13 new units in three new buildings is to comply with the  
14 PUD process as to affordable housing, at least 5 of the  
03:23:33 15 total of 16 units be affordable, must be 20 percent.

16 So I spoke to representatives at Ocean Properties.  
17 They told me twice they didn't want to discuss math. I  
18 said nothing has really changed other than the  
19 elimination of the 2 units. They didn't want to discuss  
03:24:10 20 math.

21 And so as we know, affordable housing is a very big  
22 issue on the island. I think -- I believe the Connors  
23 Emerson School, the population of students is declining  
24 because families who live here cannot afford to live  
03:24:59 25 here, and that -- those structures were year-round

1 structures, year-round residential structures when they  
2 were built, and those people were kicked out of the  
3 property when Ocean Properties purchased it.

03:25:27 4 It was a big deal and it wasn't really well covered  
5 but it is known to the residents who have lived there.

6 So my [inaudible] is if they want to build  
7 affordable housing, then that, I believe, they are  
8 allowed to do that.

9 So why don't they work with a group like the Island  
03:25:59 10 Housing Trust who I am told they're not considered  
11 year-round rentals as a change from traditional housing  
12 construction?

13 I just don't think that Ocean Properties is in the  
14 business of affordable housing or should be, and they're  
03:26:29 15 very vague on their numbers. They don't even want to  
16 discuss it.

17 That's all I have to say. I thank you for your  
18 time. I appreciate it.

19 MR. FULLER: Thank you. I'll check and see, Tom,  
03:26:44 20 if there's anybody. I can't tell. Is there anybody  
21 else -- we've heard from two speakers now.

22 Is there anyone else on the public comment line who  
23 wishes to speak during this public hearing portion of  
24 this agenda item for Acadia Apartments to remand?

03:27:10 25 MR. GREIF: This is Art Greif.

1 MR. FULLER: Hi, Art.

2 BY MR. GREIF: My concern is that Ms. Mills is a  
3 party, and I represent her as a party, and when I tried  
4 to object to the chairman's suggestion that they would  
03:27:42 5 hear only from the applicant, and apparently they will  
6 hear only from Ms. Mills in public comment, that is  
7 inconsistent with due process.

8 I note that the rules of procedure for the planning  
9 board don't even address the issue except the LUO does  
03:28:17 10 say that any opponent may submit, as I did, ten copies  
11 of their opposition, which I did. But I hope that I am  
12 not limited to my Zoom participation by simply making my  
13 objections -- speaking in public comment and public  
14 comment only. I want to have that clarified for the  
03:28:54 15 record.

16 Thank you.

17 CHAIR ST. GERMAIN: Okay. All right. I've got  
18 Mr. Bearor waiting at this point in time. Typically we  
19 limit participation to, you know, several minutes. 3  
03:29:23 20 minutes is the norm.

21 Mr. Bearor, can you weigh in on this one, please?

22 MR. BEAROR: Sure. My impression of the procedure  
23 thus far is that Mr. Greif, as representative of  
24 Ms. Mills, was given an opportunity -- and certainly not  
03:30:05 25 limited to 3 minutes -- to make his argument as to what

1 the board of appeals' decision on remand requires of  
2 this planning board. He had a chance to do that, he had  
3 a chance to respond to anything that Mr. Hamilton had  
4 presented and Mr. Moore had presented on behalf of the  
03:30:40 5 applicant.

6 So I'm troubled to really understand what more he  
7 thinks he is entitled to, and I'll emphasize the word  
8 entitled because it's a public hearing, it's nothing  
9 more than that. We don't have parties at the planning  
03:31:09 10 board level.

11 He's been given a status that I think we recognized  
12 the need to hear Mr. Greif's arguments on behalf of his  
13 client, and we have done that, and if he wants to now on  
14 his own behalf as an individual, as a member of the  
03:31:37 15 public, speak, he certainly can. He'll be subject to  
16 the same requirements of any other member of the public.

17 I don't think that we -- due process in an  
18 administrative proceeding like this is notice of the  
19 hearing and an opportunity to be heard, and I think that  
03:32:05 20 we have done more than that.

21 MR. HAMILTON: I agree.

22 CHAIR ST. GERMAIN: Thank you. And I'd add that as  
23 the chair I allowed you to speak, and you concluded your  
24 remarks without any prompt from me. You just said that  
03:32:30 25 you, yourself, concluded them, Mr. Greif. You were

1 given just under 6 minutes.

2 If you'd like to speak as a member of the public  
3 rather than as a representative of Mrs. Mills, then as  
4 Mr. Bearor said, then feel free. You've got 3 minutes.

03:33:04 5 MR. GREIF: The point I wish to make is that  
6 this -- the number of affordable units is critical to  
7 the decision this board must make.

8 Justice Murray, when she stayed all construction,  
9 expressly found that we were likely to prevail in our  
03:34:15 10 argument that this board didn't allow enough affordable  
11 units, and the only way this board got to the 2  
12 affordable units it did was through its acceptance of  
13 the novel theory that nonconforming structure status can  
14 be 5 completely new structures.

03:35:04 15 And so although Mr. Hamilton began by saying we're  
16 not here to talk about nonconformity, the only way he  
17 can talk about 1, 2, or 3 affordable units when it  
18 should really be 5 or 6 is by insisting that there is  
19 some special grandfathered status to the dwelling units  
03:35:41 20 that he has.

21 The board of appeals was quite clear. These are  
22 nonconforming structures. The Superior Court was quite  
23 clear. These are nonconforming structures.

24 Thanks.

03:36:39 25 CHAIR ST. GERMAIN: All right, thank you.

1 MR. FULLERS: If I may, Tom, can I make one last  
2 check? I haven't heard any other chimes on the phone  
3 but just to make sure that in all the back and forth  
4 that I haven't missed anyone one last time on the public  
03:37:16 5 hearing line, if I could.

6 CHAIR ST. GERMAIN: Sure.

7 MR. FULLER: I'll just make one last check. Is  
8 there anyone on the public comment line who wishes to  
9 speak during the public hearing portion of this agenda  
03:37:44 10 item?

11 I'm not hearing anybody.

12 CHAIR ST. GERMAIN: All right. Great. In that  
13 case I think I'll close the public hearing. And I'll go  
14 back to the planning board to see if you have any  
03:38:06 15 thoughts on things that we've heard and the way that  
16 we're going to approach this, if it has changed or if  
17 any of you are prepared to try to delve into the meat  
18 right now.

19 Go ahead, John.

03:38:31 20 MR. FITZPATRICK: I'm multi-tasking. A question  
21 for Ed. And I apologize, when I left the office  
22 yesterday, I didn't bring the old application package to  
23 be able to reference.

24 I would assume -- I would assume where we're  
03:39:06 25 remanded to go back and look at the three items that I

1 mentioned earlier, we cannot look at anything de novo,  
2 so whatever is in the original application is the frame  
3 of reference that we're limited to.

4 Is that a fair statement, Ed?

03:39:34 5 MR. BEAROR: Yes.

6 MR. FITZPATRICK: Okay. I don't recall whether the  
7 underground utilities provision was shown and noted in  
8 the plans. I don't recall if the permitted amenity,  
9 bringing people into the heart of downtown, was in  
03:40:15 10 there.

11 If they were, then I'll continue to fall on the  
12 last set of members that I came up with. I think we all  
13 agree that base development density is 8.

14 Is there any debate amongst the parties that that  
03:40:38 15 number is valid?

16 CHAIR ST. GERMAIN: John, that's a good point, so  
17 why don't we go member-by-member [inaudible].

18 Do you agree, Joe? I think you said that earlier  
19 that you felt that the base development density was 8.  
03:41:06 20 I think you're muted right now, Joe.

21 MR. COUGH: He was right for moving things along.  
22 The 16 number was right in the next round.

23 CHAIR ST. GERMAIN: Basil, do you agree with that?

24 MR. ELEFThERIOU: Yeah, I agree both with the base  
03:42:05 25 of 8 and maximum of 16.

1 CHAIR ST. GERMAIN: Erica, do you concur?

2 MS. BROOKS: I concur.

3 CHAIR ST. GERMAIN: Okay. I do, too. So John,  
4 would you like to --

03:42:28 5 MR. FITZPATRICK: So we're two-thirds of the way  
6 there.

7 So for the last number, for affordability, again, I  
8 mentioned earlier, if the underground utility provision  
9 was in the original application, then I would -- I would  
03:42:52 10 promote and support that there's an additional market  
11 unit that's available bringing that number up to 9.

12 If the permitted amenity or -- to Bar Harbor is  
13 referenced, you know, the sidewalk or the biking lane,  
14 some sort of amenity is better funded, turned over  
03:43:25 15 amenity to the Town is brought in, then there's another  
16 market unit that's available. That brings it up to 10.

17 Again, if there's a bus stop that's proposed -- I  
18 don't recall seeing that one -- but if there is, that  
19 would bring it up to 11.

03:43:57 20 And then you started to do the trade-off between  
21 affordable units and market units.

22 If none of those were proposed, then I think you  
23 are doing the trade-off the minute you start with Unit  
24 No. 9, and the number of affordable units would be 4.

03:44:31 25 I still read the ordinance that at the final

1 development a minimum of 20 percent of the base  
2 development density needs to be provided. Again, to  
3 minimize the sake of argument, if we're at 4, that's  
4 over 1 and it's over 2, so it doesn't really matter  
03:45:01 5 whether we round up or round down at that point.

6 If we're at 2, we land there. It doesn't matter  
7 whether we round up or round down. But I would say if  
8 none of those things were included in the original  
9 development application, then we're at 12 market and 4  
03:45:32 10 affordable. If they were, then we back down from there.  
11 I just don't have that information in front of me at  
12 this time.

13 MR. HAMILTON: Can we provide that for the board,  
14 what the final plans showed previously? I think  
03:45:59 15 Mr. Moore can do that.

16 CHAIR ST. GERMAIN: Mr. Hamilton, are you  
17 suggesting that he can do that right now?

18 MR. MOORE: Yes. If you can let me to show my  
19 screen?

03:46:19 20 MR. GREIF: I object that this is not actually  
21 before the board in the submission made. It's either in  
22 the record from the prior proceeding or it's not.

23 MR. MOORE: Mr. Chairman -- Mr. Chairman, if I can  
24 jump in. Your final decision, the first item listed is  
03:46:53 25 this approval is based upon the following submitted



1 plans, Exhibit 9.12, proposed site plan in 1.06, 2-19  
2 prepared by the Moore Companies. That's the plan I'm  
3 prepared to show.

4 CHAIR ST. GERMAIN: Ed, is that permitted?

03:47:30 5 MR. BEAROR: Yeah, that represents -- that  
6 representation I would accept. I have no reason not to  
7 accept the plan that Perry is going to show us as what  
8 was previously filed.

9 MR. MOORE: And made part of the record.

03:47:53 10 CHAIR ST. GERMAIN: Okay. Steve, are we ready?

11 MR. FULLER: Yeah, I think you should be able to go  
12 ahead. There should be an option down at the bottom of  
13 your screen, Perry, where you -- there you go.

14 MR. HAMILTON: It's up, Perry.

03:48:30 15 MR. MOORE: I can't see it. Hold on. All right.

16 So this is the final plan. I'll zoom in just to  
17 make sure that the record is clear on where we're at.  
18 This is the plan referenced.

19 The history, as I recall it -- you'll have to  
03:49:06 20 forgive me because it has been a while -- but the  
21 underground utilities are -- this is an existing  
22 underground utility, if you can follow my cursor -- and  
23 what we proposed on the plan -- I'm not seeing it  
24 here -- but all of the other utilities from West Street  
03:49:49 25 and up through here -- hang on just a second. I can get

1 those plans.

2 But I think that the underground utility question  
3 is not -- not really an issue because the record shows  
4 that this part is the pedestrian amenities.

03:50:12 5 What happened with this is that we had proposed, if  
6 you'll recall, a sidewalk along West Street. It was  
7 supposed to come off of here and a bus stop. Chip and I  
8 talked about it. Chip presented numbers to the council.  
9 The council elected not to participate.

03:50:52 10 It's my best recollection that this was accepted as  
11 pedestrian [inaudible]. It was side stairs and this  
12 patio which gave these people pedestrian access from  
13 Woodbury Road, so they didn't have to walk up and down  
14 West Street.

03:51:27 15 I don't recall that we were ever talking about  
16 making a connection to the downtown. If that's going to  
17 be the sword we have to fall on, I don't want to go  
18 there.

19 I think we -- the underground utilities are clearly  
03:51:51 20 provided. There were several utility plans shown, and  
21 that's where we were at; but I think at the end of the  
22 day we're talking about 8 units, underground utilities,  
23 it's 9. If we want to go 4 and 4 to get to there, I  
24 don't see that that's it.

03:52:29 25 I think in the interest of making this easier for

1 you guys -- and I want to express my appreciation for  
2 your time and consideration -- that we -- we're not  
3 going to get hung up on the number of affordable units  
4 moving forward.

03:53:07 5 We gave you guys underground utilities.

6 [Inaudible] what you determine.

7 Andy?

8 MR. HAMILTON: So I'm just going to wrap up quickly  
9 because your time is valuable, and I want to make sure  
03:53:28 10 we're efficient.

11 So again, we started with 8 market units, 1 for  
12 underground utilities, 1 for pedestrian amenities, and  
13 we're at 10, so affordable is 11, 12th is market,  
14 affordable, 13. 14th is market, 15 is affordable, 16th  
03:54:05 15 is market.

16 That's the 3 that Member Fitzpatrick said, it  
17 depends upon what you had in your original submission.  
18 Mr. Moore has pointed out by actually showing you the  
19 plan again what you had used as the basis for your  
03:54:40 20 original approval. It's in the record to respond to  
21 Mr. Greif's good question.

22 And so we're -- we're willing to go 3. We started  
23 tonight on the basis of 1.6 rounding up. If you have  
24 to, to 2. We think the more appropriate is to round  
03:55:06 25 down to 1, take the whole number that's contained

1 within, but we can do this with 3. We conferred, we  
2 caucused privately, and we can live with 3 affordable  
3 units.

4 We actually want to move on and be able to do this  
03:55:49 5 project. As the Town knows, having housing for workers  
6 is very important. So we're willing to move on.

7 CHAIR ST. GERMAIN: Thank you. So we've heard from  
8 the applicant.

9 John, I know that you went through and you kind of  
03:56:19 10 gave a description of the way the map would go. If you  
11 were inclined to make a motion, I definitely believe  
12 that we should cite the provisions of 125-69S that  
13 you're referring to and have them reflect the  
14 conditional nature of, you know, what you had suggested  
03:56:49 15 if you were inclined to make a motion.

16 MR. FITZPATRICK: Let me formulate it here. Keep  
17 talking amongst yourselves.

18 CHAIR ST. GERMAIN: I don't have anything left to  
19 say.

04:34:19 20 MR. FITZPATRICK: Talk about the weather, how nice  
21 it is outside.

22 CHAIR ST. GERMAIN: They're eating pizza downstairs  
23 and I'm hungry.

24 Yes, it's an awfully nice day. It's a nice day  
04:34:45 25 here, late April. There were peepers by the ocean the

1 other night. I didn't know the peepers were in the  
2 ocean. How's that for small talk?

3 So any motion that is made -- and I'm sure you're  
4 going to cover this, John -- would reflect the  
04:40:06 5 directions given to us by the appeals court to come up  
6 with a required base development density to determine  
7 the maximum allowable units, and then in determining the  
8 maximum allowable units, cite where in the land use  
9 ordinance the PUD provision allow us to -- or how they  
04:40:50 10 get allocated I believe would be the right way to go  
11 about it; but I do think that citing, you know, the  
12 provisions in 125-69S(6) are important.

13 MR. ELEFThERIOU: Tom, could I ask Ed just a quick  
14 question?

04:41:20 15 We have the appeal decision, and we have findings,  
16 of course, and then, of course, the decision. So within  
17 the decision text, in that body, they cite the three  
18 things we're discussing.

19 MR. BEAROR: Yes.

04:41:57 20 MR. ELEFThERIOU: But in the findings, Finding  
21 No. 2, they talk about the nonconforming structure.

22 Do we need to address that at all since [inaudible]  
23 decision?

24 MR. BEAROR: I think we did and I think the  
04:42:29 25 board --

1 CHAIR ST. GERMAIN: Ed, you just went to mute.

2 MR. BEAROR: I don't think you need anything other  
3 than what is in the order of remand itself.

4 That finding is puzzling. I think you can make  
04:43:06 5 your decision without addressing that finding. I think  
6 THAT Mr. Hamilton had encouraged you to have a four-part  
7 decision which would have included addressing that  
8 finding, but I don't think it's for the planning board  
9 to tell the board of appeals that they got something  
04:43:33 10 wrong. That's just not for us to do.

11 And if we can comply with their remand order by not  
12 having to get into the merits of their underlying  
13 decision, I think that the motion that I -- that John  
14 previewed when we started the deliberations a while ago,  
04:44:04 15 the three-part motion, is sufficient to address, I  
16 think, the board of appeals' decision in its entirety.

17 MR. ELEFThERIOU: Thanks.

18 MR. BEAROR: While I have the -- am I still  
19 talking?

04:44:29 20 CHAIR ST. GERMAIN: Yes, go ahead, Ed.

21 MR. BEAROR: I don't think that our decision  
22 tonight is based upon a grandfathering argument that was  
23 presented earlier. I want to make that point. And I  
24 don't think that Justice Murray's earlier decision,  
04:44:55 25 although she certainly -- she certainly addressed what

1 she thought was some infirmities in your earlier  
2 decision, that was by no means a ruling of that court.  
3 She was indicating that Mr. Greif was entitled to his --  
4 the granting of his TRO because there were credible  
04:45:32 5 arguments that he could make based upon what she had  
6 seen in the record and what arguments he had put forth  
7 that he might indeed prevail.

8 But I don't want the board to be left with the  
9 impression that the Superior Court had ruled that your  
04:46:03 10 earlier decision was right or wrong. It simply alluded  
11 to the fact that it certainly appeared to the Court  
12 based on the papers that were filed that there could  
13 have been an error in your calculations. That's it.

14 CHAIR ST. GERMAIN: Thanks, Ed.

04:46:34 15 MR. GREIF: I would point out that that is simply  
16 not what was required to obtain the stay pending appeal.

17 We had to show a likelihood of success on appeal  
18 and we showed that. That's not a final decision, but it  
19 should be a persuasive decision.

04:47:07 20 MR. BEAROR: Right. I agree, and I didn't mean to  
21 suggest otherwise. I thought I was actually paying  
22 quite a compliment.

23 I think that this decision tonight is based on  
24 different rationale than the decision that was made back  
04:47:33 25 in 2019. So I think the presentation made to the Court

1 on your decision.

2 MR. FITZPATRICK: All right. Ready for me to give  
3 it a crack?

4 CHAIR ST. GERMAIN: Let's have it, John.

04:48:08 5 MR. FITZPATRICK: Let's see, okay. So in response  
6 to the Bar Harbor appeals board decision, specifically  
7 related to AB-2019-01 dated February 13th, 2020, I would  
8 move to approve the subdivision site plan PUD-2017-02,  
9 BHAPTS with the condition the subdivision plan be  
04:49:12 10 recorded in the registry of deeds, stamped by a public  
11 land surveyor prior to being signed by the planning  
12 board as it complies to LUO specifically as follows:

13 The planning board finds that the base development  
14 density number based on LUO Section 125-69S(6)(a)(1) to  
04:49:59 15 allow 8 units. The planning board also finds based on  
16 LUO Section 125-69S(6)(a)(3) that the maximum allowable  
17 units under the PUD shall be 16. And the planning board  
18 also finds based on LUO Section 125-69S(6)(b) that the  
19 number of base affordable units shall be 3, and finds  
04:51:05 20 that with the applicant providing 1 additional unit for  
21 the provision of underground utilities -- that's a  
22 market unit -- 1 additional market unit for the  
23 provision of amenities as outlined in  
24 125-69S(6)(a)(2)(e) for a total of 13 market units and 3  
04:51:54 25 affordable units.

1 MR. COUGH: I'll second that. Make a motion, John.  
 2 CHAIR ST. GERMAIN: Okay. So moved and seconded.  
 3 Do members have any further discussion or points to  
 4 make?  
 04:52:29 5 MR. ELEFThERIOU: I don't know if it's important to  
 6 note, John -- I don't know if you want to add something  
 7 to your motion -- just the fact of how we got to the  
 8 number 1, affordable unit. We had a discussion earlier  
 9 between 1 and 2.  
 04:52:58 10 And 125-69R(3)(f) specifically states that we round  
 11 down to 1. I just didn't know if that was worthwhile  
 12 adding. Just as a point of clarity.  
 13 MR. FITZPATRICK: I would -- I guess I would  
 14 suggest that we go outside of that and just say that it  
 04:53:38 15 meets 125-69S(6)(3)(b).  
 16 MR. ELEFThERIOU: Okay. That's fine. I second.  
 17 MR. COUGH: I would like to ask Ed if he sees any  
 18 omissions in the motion?  
 19 MR. BEAROR: The only omission, if it might be  
 04:54:22 20 there, maybe I just didn't hear it, I heard John  
 21 describe 1 unit for underground utilities. I didn't  
 22 hear mention of whether there was a second unit. I  
 23 didn't know if we were agreeing -- it seems like we were  
 24 because you only came up with 3 affordable units that  
 04:54:43 25 you must have also found that they were pedestrian

1 amenities?  
 2 MR. FITZPATRICK: Yeah, we did, I think I referred  
 3 to that.  
 4 MR. BEAROR: If the board members think you  
 04:55:06 5 referred to it, then that's fine. I didn't -- I didn't  
 6 pick up on it. If the board members heard you say or  
 7 reference the right section, amenities --  
 8 MR. MOORE: So forgive me for jumping in, but he  
 9 did say 16. That is pedestrian amenities.  
 04:55:38 10 MR. COUGH: As far as the second one is concerned,  
 11 whether I mentioned it or not in detail, I certainly  
 12 referenced it by discussion so --.  
 13 MR. BEAROR: I don't see any [inaudible].  
 14 MR. COUGH: I'm fine with the way it was. If  
 04:56:06 15 there's nothing else, then that's good.  
 16 CHAIR ST. GERMAIN: Just to be clear, John, was  
 17 your motion a conditional one, if the pedestrian  
 18 amenities are to be shown on the plan from 2017 or is it  
 19 based on the --  
 04:56:32 20 MR. FITZPATRICK: It was accepting of what Perry  
 21 shared. That date matches the record.  
 22 CHAIR ST. GERMAIN: Okay.  
 23 MR. FITZPATRICK: The date on the drawing matches  
 24 the record.  
 04:56:48 25 CHAIR ST. GERMAIN: Okay. And you're saying

1 that -- so you're basing your motion on the presentation  
 2 that we just saw, which was the plans from 2017?  
 3 MR. FITZPATRICK: Yeah, and I just looked it up  
 4 electronically in the package I received in January of  
 04:57:12 5 2019 as well.  
 6 CHAIR ST. GERMAIN: So it's been moved and  
 7 seconded. Do any other members have anything to add to  
 8 this at this point?  
 9 All right. I'll call a vote. Joe?  
 04:57:44 10 MR. COUGH: Aye.  
 11 CHAIR ST. GERMAIN: I think you're muted, Basil.  
 12 Thank you.  
 13 MR. ELEFThERIOU: Aye.  
 14 CHAIR ST. GERMAIN: Erica.  
 04:58:01 15 MS. BROOKS: Aye.  
 16 CHAIR ST. GERMAIN: Thank you.  
 17 MR. HAMILTON: Thank you very much.  
 18 CHAIR ST. GERMAIN: Thank you.  
 19 MR. MOORE: So, John, just a little bit of  
 04:58:21 20 housekeeping here. So what we will do is revise the  
 21 plat to reflect there are 3 affordable units required?  
 22 MR. FITZPATRICK: Correct.  
 23 (This portion of the planning board meeting was  
 24 concluded.)  
 25

# CERTIFICATE

I, Lisa Fitzgerald, a Notary Public in and for the State of Maine, hereby certify that a prerecorded Zoom meeting was transcribed by me and later reduced to typewritten form with the aid of computer-aided transcription; and the foregoing is a full and true record of the testimony given.

I further certify that I am a disinterested person in the event or outcome of the above-named cause of action.

IN WITNESS WHEREOF, I subscribe my hand and affix my seal this June 17, 2020.

*Lisa Fitzgerald*

LISA FITZGERALD, NOTARY PUBLIC  
 Court Reporter

My commission expires: May 10, 2024